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Technical assistance and capacity-building

Note verbale dated 5 September 2017 from the Permanent Mission of Somalia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of the Federal Republic of Somalia to the United Nations and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and has the honour to transmit herewith the comments of the Government of Somalia on the report of the Independent Expert on the situation of human rights in Somalia (A/HRC/36/62) (see annex), with whom they have already been shared. The Permanent Mission of Somalia requests that the present note verbale and the annex thereto* be circulated as a document of the thirty-sixth session of the Human Rights Council under agenda item 10.

* Reproduced as received, in the language of submission only.

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Please recycle

Annex to the note verbale dated 5 September 2017 from the Permanent Mission of Somalia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Comments of the Federal Government of Somalia on the report to the 36th session of the Human Rights Council by the Independent Expert on the situation of human rights in Somalia

The below made comments and suggestions are addressed directly at the Office of the Independent Expert:

Paragraph 9

The college of clan representatives is 14.025 instead of the 13.700 noted in this paragraph. The official title (per the Provisional Constitution) of the first chamber of the Somali Federal Parliament is 'House of the People' and not "Lower House".

Paragraph 11

It is worth noting that the Government on 13 July 2017 conducted for the first time ever a cabinet meeting outside of the capital city Mogadishu. The historical Federal Cabinet meeting in Kismayo, which was welcomed by all Federal Member States, demonstrates the strengthening relationship between the Government and the Federal Member States. Moreover, the Federal Cabinet Ministries have begun consultations with Federal Member States on their respective national policy priorities.

Paragraph 20

Furthermore, the Ministry of Women and Human Rights Development established a 9th Pillar in the National Development Plan implementation framework. This Pillar will be known as the Human Rights and Gender Pillar. This will ensure focus on two central cross-cutting issues and strengthen its importance as a national priority.

Paragraph 25

With regards to the "strong push back by some Islamic clerics" to the ratification of CEDAW, it is worth to mention that a 'fatwa' was decreed by these clerics who are considered to be part of the highest religious authority in Somalia.

Paragraph 36

With regards to our government's position against the arbitrary arrest of journalists, we would like to make this important addition to this paragraph: any necessary arrests should be conducted through due process. Please note that before any arrest concerning or related to this matter, the Ministry of Information should be informed and the following sentence in this paragraph is not accurate: "before any arrest, the Minister of Justice should consult the Ministry of Information".

Paragraph 37

The Government plans to respond to the International Labor Organization (ILO) ruling with respect to this matter. Additionally, the Government recommends that the ILO

ensures to have a presence on the ground in Somalia so as to properly investigate matters of this nature.

Paragraph 40

To highlight the reasons for lack of achievement in this matter, it is worth noting that the international community also bears significant responsibility as it has not properly resourced technical assistance in the field of human rights to the government, especially to the rule of law and security institutions.

Paragraph 46

Executions are not conducted in public unless the Minister of Justice orders otherwise (this is in accordance with Article 248 (3) of the Somali Criminal Procedure Code). On the ratification of the Second Optional Protocol to the ICCPR, there seems to be a miscommunication as to what the Attorney General stated. The Office of the Attorney General has a non-political mandate, and its only role in the ratification process of such Protocol would be limited (only consultative role). Moreover, executions carried out in public are mainly under the jurisdiction of military courts, as a result of current prevailing security conditions in Somalia.

Paragraph 49

The following sentence, "The Minister of Justice indicated that the Xeer professionals who were currently working with some ministries could have been empowered to deal with cases of sexual and gender-based violence", is misquoting what the Minister of Justice stated. Traditional Dispute Resolution (TDR) policy states that no criminal cases should be dealt with through customary dispute resolution.

Paragraph 58

It is important to note in this paragraph that steps have been taken by the Ministry of Women and Human Rights Development to fast track the Sexual Offences Bill. This bill will address sexual and gender based violence crimes and strengthen the criminal system in Somalia.

Paragraph 59

The proposed conference on the role of Xeer in sexual and gender based violence and justice responses in Somalia should also focus on where the traditional system ends and the formal criminal law system starts. The following is not true: "Since it collapsed, under the formal justice system, victims' families are required to pay for the upkeep in pre-trial detention of persons held on remand until the case is concluded." Families are not required to pay at any stage for the upkeep of persons held in pre-trial detention. This paragraph focuses on the lack of capacity of the formal justice system. The problem is much deeper. A more effective and functioning legal system is an important prerequisite. Nonetheless, restoring people's confidence in the formal criminal system requires time and effort put into awareness raising and civil education.

Paragraph 63

The Ministry of Women and Human Rights Development welcomes the proposal of the Independent Expert to hold a Xeer conference in Somalia and will gladly cooperate with the Independent Expert in organizing it.

Paragraph 79

This paragraph notes that "AMISOM is implementing a zero-tolerance policy on sexual exploitation and abuse and this is part of pre-deployment trainings". Although it is positive that AMISOM is taking measures to mitigate the actions of its troops, the Government does not have any insight into the implementation of these measures and/or their success or failure. In order to speak of effective measure, the Government should have a role in the monitoring process. Furthermore, the Independent Expert should be advocating for the inclusion of the relevant government agencies in this process. The Independent Expert should also advocate that it is essential that the Government's participation in the Human Rights Due Diligence Working Group of AMISOM and UNSOM is fast tracked. The Somali government should have a voice in the decisions made in this crucial working group.